
BOARD OF SELECTMEN MEETING MINUTES 11/3/09

The Board of Selectmen met in the Town Hall, Joseph F. Bilotta Meeting Room as scheduled with Thomas Alonzo, Steven M. deBettencourt, Thomas Mason, Dave Matthews and CAFO Kerry Speidel present, Paula Bertram absent until 6:40 P.M. Board opened Regular Session at 6:31 P.M and recessed to open Executive Session by roll call vote; Steve aye, Tom A. aye, Tom M. aye and Dave aye, at this time for the purpose of discussing contract deliberations when having in open session would be detrimental to the town's negotiating strategies, MGL Chapter 39, §23B (6). Chairman announced that the Board will be returning to Regular Session, which reconvened @ 7:07 PM with the Pledge of Allegiance

PUBLIC DISCUSSION

Rob Bowen pointed out the Attorney Generals opportunity to bring an appeal to the DPU's decision and would urge the board to seriously consider the option of being a party to a civil action suit. The town also has the right to appeal and would urge the town to discuss with Town Counsel for the appeal process to the DPU's decision.

ANNOUNCEMENTS

1. Yard Waste Days: Saturdays/October 17th thru November 21st from 8:00 AM to 4:00 PM – At the Lunenburg Landfill, Youngs Road. Acceptable material: grass clippings, bark mulch, wood chips, leaves, brush (with a diameter not to exceed 3 inches, unlimited length). Shrubbery and plantings; with the same restrictions. Any container, bags, boxes, barrels, trashcans, tarps, flower pots, etc., must be removed and taken by the resident. No household garbage, trash, or rubbish of any kind will be accepted. No materials within the Landfill area; sand, stone, gravel, etc. are to be given away or sold. Access will be restricted to the disposal area. Commercial landscapers will not be allowed to dump. Open to Lunenburg residents only.

2. State Representative with the Acton Democratic Town Committee hosting a presentation on the future of education in Massachusetts, Monday November 9th from 7:30 to 9:00 PM., @ the R.J. Gray Middle School Auditorium in Acton.

APPOINTMENTS

1. 7:10 PM, Interview, Robert Ebersole, Sewer Commission – of 94 Main Street informed the board that grew up in Lunenburg and he has moved back to Lunenburg and would like to become involved in once again. He is currently employed as CFO with the So.Boston Comm Health Ctr. He is a graduate of Suffolk Law and the Kennedy School of Gov't. Was former Treasurer/Collector for Lunenburg, Lexington and Chelsea. Also worked with the State Department of Community Development from 1991-2002. Dealing with the City of Fitchburg and the IMA and believe his skills would be a benefit to the town. Understand that currently the position is appointed and will be an elected position in the spring and he intends to run. Board of Selectmen reps on the Sewer Commission (Paula & Steve) believe he would be an asset and his expertise will be invaluable to the commission. Paula move to appoint Mr. Ebersole to Sewer Commission, Steve seconded voted unanimously to approve.

2. 7:15 PM Public Hearing, Transfer of All Alcoholic Liquor License, Ixtapa Mexican Cantina, 308 Massachusetts Ave. – Chair read the following Notice of Public Hearing: The Licensing Authority will hold a Public Hearing on November 3, 2009 at 7:15 PM in the Joseph F. Bilotta Meeting Room, 2 Floor Town Hall on the application for a transfer of a Common Victualer All Alcoholic License. This transfer is being submitted by Green Pepper Inc. d/b/a Ixtapa Mexican Cantina and said license is to be exercised at 308 Massachusetts Avenue, Lunenburg MA 01462, Thomas A. Alonzo, Chairperson, Board of Selectmen/Licensing Authority. Per Nicolas Felici, who represents Green Pepper Inc., this license will be transferred to Red Pepper Inc. a family transaction from one family member, David Brambila to another, Jaime Brambila. No changes will occur within the business, all the current employees will remain as will the manager who is TIPS certified and familiar with the town and with serving liquor. Tom M., move grant license transfer from Green Pepper Inc. to Red Pepper Inc., Steve seconded, voted unanimously.

3. 7:20 PM, FY10 Budget – Finance & School Committee – Kerry presented the attached Power Point information on the FY10 budget. Also present were members of the Finance Committee, School Committee, Town Accountant Karen Brochu, Treasurer/Collector Jeffrey Ugalde, Planning Director Marion Benson and School Superintendant Loxi Jo Calmes. Kerry's recommendation is to draw \$142,622 from the stabilization fund to fund the overages within the solid waste budget (\$115,161) and court judgment (\$27,500). This requires a 2/3 approval of Town Meeting and should this fail, then plan B would be to go back to the employees, both union and non-union about changes to the health insurance benefits even though she's heard loud and clear from these groups that they have already made significant concessions in this area.

Milree Keeling questioned use of the stabilization fund and proposed that the Charter school fee of \$13,885 is a charge that the entire community should absorb as they bill the town and it's taken out before we ever see our state aid. They bill us and we pay it, it's a state

wide decision and as such believes that this cost should also be taken out of the stabilization fund and questioned why Kerry wouldn't consider taking this charge out of stabilization as well. Kerry had used this number in what she had determined to be appropriated to either side, don't think it's unreasonable that the school absorb a larger percentage of those numbers. Should be a decision of others and not just her as to what percentage should be appropriated. She provides advice and input based upon what she sees, not necessarily opposed but long term we need an agreement on how we handle these issues. For this presentation she was focusing on the non-school portion and hadn't focused in on that. Loxi Jo Calmes, Superintendent of Schools noted that there were a few areas that were cut on the state level and circuit breaker was one of them, they are reimbursements that have been reduced from 42% down to 40%, really welcome opportunity to once again have a body that can sit down on a regular basis to discuss this; will benefit us all and confident that this will help us work through the situations that we're facing. Mark Erickson, Finance Committee Rep questioned on the recycling enterprise deficit, what is it that makes it extraordinary and how do we know that it's not re-occurring. Per Kerry previously we had been using retained earnings to subsidize operations, and had made adjustments to the fees. The PAYT itself is priced appropriately, but what we didn't accurately account for is the recycling portion. We bid the contract as one project, this vendor did not separate out the costs and in doing some analysis and discussing with the vendor those who have been using the PAYT program have been paying more than their full share and we should have been appropriating a proportionate amount to fund the recycling portion. There were other issues, we made a large purchase of bags at the end of the past fiscal year and didn't come across that until the books had been closed, that's not going to occur again. We're going to make sure that whatever charges incurred are incurred within the appropriate year. On the local level, we are seeing some improvement in some of our local receipts. Building permits have gone up slightly, the Tri-Town project should be commencing in about two weeks, things should improve somewhat. State aid will be tough and she will continue to work with the employees on the health insurance and other concessions, looking at more of the same for FY11. Dave's concern is that if we start tapping into stabilization fund now, we still could have to tap into it for the debris cleanup as we don't know what going to happen with the state on their level and going into 2011 it's going to be even more painful. We're not solving our problem. Kerry's issue is with the painful cuts; personnel, don't see how we make those cuts without closing departments and significantly impacting what services we provide. Not hearing that this is acceptable, or that this is an option but rather that the stabilization fund is an option. Dave would like to have those discussions as to what the concessions may be. Kerry has spoken with a wide spectrum of people, not just the employees. Our (town side) payroll is \$16K a day and that includes the public safety and DPW departments; we're looking at a payroll of about \$4K a day for the other "non-essential" departments and what do you do, close these departments completely. The state has told us to expect reimbursement for the debris removal. 100% of the storm related costs have been paid, we've been told by the state that they will reimburse us at some point in time. There's a difference between money we have for an appropriation and cash flow. Chair believes that as far as the costs for the debris cleanup we can only deal with the gap that we already have and we're doing what the state is directing us to do. Per Tom M., right now we're hanging on, but with Prop 2 ½ you can't without an override continue on and right now he is not prepared to make those painful cuts. Chair also noted that the \$300,000 that has been put in escrow (Tri-Town project) and the options of utilizing those funds. Per Kerry, she had asked the Planning Director and there are no restrictions as to the use, they can be used for capital and operating budgets, but have to be cognizant that those are one time funds and not really beneficial to use for operating budgets. Paula would like to have the discussions with regards to the efficiency of operations as there is significant cost savings and we need to identify innovative ways to increase the use of our staff. Per Kerry this will basically be the presentation for the Special Town Meeting. Chair acknowledged the comments of Milree and Loxi and noted that we really need to hang together as a town. Brief recess @ 8:30 PM, reconvened @ 8: 35 PM.

4. 8:30 PM, Utilities Task Force Update – Chair Bill Gustus informed the Board that over the course of the past few months the committee has been determining the best way to reach their goal and the issue of the costs associated with creating a municipal electric utility; obtaining the infrastructure and purchase of Unitil's assets. The committee has been following legislation that's been proposed and it is presently in the Joint Committee on Telecommunications in the Legislature and they have put the brakes on this as they've commissioned a report and this is one of the ways that the changes die. In order to continue to move the ball forward we investigated the option of special legislation for the Town of Lunenburg itself and have provided an article for inclusion in the warrant of the Special Town Meeting. M.G.L. Chapter 80A is a variation on the eminent domain statute and gives the town the opportunity to walk away from the transaction if the costs are deemed to be too high. Under 80A the town will petition the court for an eminent domain taking and the court will decide if the town is eligible for the taking. Should the litigation move forward and we determine that the cost is too prohibitive and decide to back out, we would be liable for the costs for litigation incurred by Unitil. Chapter 80A currently only allows the taking of real property, the special legislation would authorize the taking of personal property as well. Far more simple than the process that has been developed by Lexington, this piece of legislation is far easier to understand and the formulas are well known. One of the problems in dealing with the DPU is that they haven't done this in some time and their proceedings are not consistent. Under an eminent domain taking it's based upon the value of the property being taken. The article doesn't bind the town to do anything, it allows us to bring this forward to the legislature and during the time it would take to go through the legislature we are prepared to try to come up with formulas to come up with value. He pointed out that once we begin this process and determine that there is enough revenue to fund, we are going to have to buy them out, there will be costs implications. We will have to utilize town counsel who is very familiar with eminent domain, these costs could range anywhere up to \$200K to \$250K, not an insignificant amount of money and want the board to be aware of these costs associated with this down the road. Chair questioned if any investigation has been done with other municipal operated companies and per Bill they have compared with Groton and it appears that they are generating at a cost

savings of approximately 20%, some work has been done on this, but we have to make some assumptions. It's unlikely that we'll be able to acquire everything that we need through the eminent domain process, would have to create a facility, our own vehicles, equipment and they haven't gotten to that level of detail yet, but this is on their agenda. Hoping that by the time this comes back from the Legislature then we'll have some of these questions answered. Chair questioned what would your opinion be about this one and per Bill, Lunenburg's argument for special legislation would be that this is about public safety and viable public service and the findings of the DPU that were released yesterday is that they (Unitil) have dropped the ball, versus the economic argument which Lexington has based their legislation on. In our case we're dealing with a utility that hasn't really done their job and question whether the other utilities will come to their aid in defending them. Just the act of bringing this to town meeting will send a message to Unitil and the State that we're extremely unhappy with what they've done and that this is a serious public safety concern and we intend to address it. Chair supports this article and noted that he just wants to be realistic in moving forward with this. Tom M., questioned if the committee is working on this on their own or have they worked with the other communities and per Bill they have met with other communities and discussed the general legislation that was pending however, as far as this special legislation we have been working on our own as the committee just doesn't believe that the general legislation is going to see it's way through anytime soon. Committee wants to move the ball forward as fast as they can.

CURRENT BUSINESS

1. Town Manager Updates

- Pearl Brook – Kerry has heard from the inspectors (plumbing & wiring) and they will be willing to forego their fees for this project. Kerry will get an update from Mr Capoccia on the bidding.

2. Minutes – Board of Selectmen Regular and Executive Session for 10/20/09 reviewed and signed.

Warrants – #22 10, 10/27/09, - \$287,704.88, #23 10, 10/28/09 - \$531,256.52, #9P 10, 10/29/09 - \$629,95.12, and #24 10, 11/3/09 - \$33,007.49 reviewed and signed.

Action File Issues – Chair informed the board of the finalization of the DPU's investigation and reviewed the attached summary. Unitil fell short of it's obligations in seven critical areas and following months of multiple hearings and testimony, findings etc. come to the conclusion that they were guilty, but as an oversight committee don't have the authority to issue fines. To not fine them and not have any teeth to do anything, these are severe problems, his belief is that DPU is in dereliction of their duties and secondary, not only have they established a monopoly within the commonwealth and now realize with this ruling that we as rate payers have no protection from a company that is in complete failure. They are going to order them to have a complete management audit at their own expense. Noted the findings of the DPU in the seven critical areas per the executive summary. This is beyond his comprehension, as one member of the board, extremely outraged at this report and the full report where they wrestle and contort themselves, unknown as to where we move forward with this. Hope that this is addressed with our state legislatures, the Governor and the Attorney General that we need to revamp the DPU or another authority at the very least to petition the Joint Committee on Telecommunications to not tie our hands with the legislation that is currently in place. Would hope that the Attorney General files an appeal on this, was regrettable to have all these findings and no teeth to deal with them. Tom M., would motion that the board send a response to the DPU, Steve's concern is that if they (DPU) don't have the charge, then we're basically spinning our wheels. Paula noted that it's important to send a letter to DPU but the system is broken and we need to appeal to our representatives to see that the legislation is changed.. If you're going to establish a monopoly there's has to be an oversight committee, need to change the existing legislation. She believes it's important that this appeal come from this body, Chair will draft a letter and have for the next meeting. Dave the other issue we have to address with them is the costs that we've incurred and how do we deal with it now not years down the road.

Paula noted the expenditure relative to wireless connectivity and \$74,000 that was expended and still do not know what this was expended for. There's been no explanation and she would like to know where we are and what we need to move forward as we have no idea what we need to address the connectivity issue and network infrastructure. Kerry has met with Nancy (IT Director) and has given her all the information she has on file on the equipment that was purchased and have asked her to define in layman's terms what was purchased. Would hope to have available by the end of the month. Chair would like to see a spreadsheet on the breakdown, so much on equipment, so much on labor, want to know piece by piece.

Paula also noted the report that was done by the State (DLS) on corrective actions that need to be taken to address those issues and Kerry has approached Melinda Ordway with the DLS and they are not allowed to travel to explain what the results of the report and we can put something together to address.

Contracts - None

3. Maximum Useful Life Equipment (borrowing vote) – Per Kerry, we are doing a permanent financing in December and part of the requirements is we need to determine a maximum useful life for legal purposes and reviewed the following equipment costs. Per

Treasurer Jeffrey Ugalde, we'll be borrowing for seven years, Chair read the authorization as follows for the Clerk, Steve deBettencourt, "I, the Clerk of the Board of Selectmen of the Town of Lunenburg, Massachusetts, certify that at a meeting of the board held November 3, 2009 of which meeting all members of the board were duly notified and at which a quorum was present, the following vote was unanimously passed, all of which appears upon the official record of the board in my custody:

Voted: that the maximum useful life of the departmental equipment listed below to be financed with the proceeds of the \$160,000 borrowing authorized by the vote of the Town passed May 3, 2008 (Article 9) and \$760,000 borrowing authorized by the vote of the Town passed May 5, 2007 (Article 9) are hereby determined pursuant to G.L. c.44, s. 7(9) to be as follows:

| <u>Purpose</u> | <u>Borrowing Amount</u> | <u>Maximum Useful Life</u> |
|------------------------------------|--------------------------------|-----------------------------------|
| Fire Department: | | |
| Ambulance & Associated Equipment | \$ 160,000 | 10 Years |
| Fire Department: | | |
| Rescue Pumper | \$ 550,000 | 10 Years |
| Department of Public Works | | |
| 6 Wheel Dump Truck w/Plow & Sander | \$ 110,000 | 10 Years |
| Department of Public Works | | |
| Multipurpose Snow/Sweep/Trim | \$ 100,000 | 10 Years |

I further certify that the vote was taken at a meeting open to the public, that no vote was taken by secret ballot, that notice stating the place, date and time of the meeting was filed with the Town Clerk and a copy thereof posted in the office of the Town Clerk or on the principal official bulletin board of the town at least 48 hours, including Saturdays but not Sundays and legal holidays, prior to the time of the meeting and remained so posted at the time of the meeting, that no deliberations or decision in connection with the vote were taken in executive session, and that the official record of the meeting was made available to the public promptly and remains available to the public, all in accordance with G.L. c.39, s.23B as amended. Dated: November 3, 2009, Steven M. deBettencourt, Clerk of the Board of Selectmen." Steve so moved to approve, Dave seconded voted unanimously to approve.

4. One day Liquor License Application – 11/14/09, 1:00 PM – 4:00 PM, Lunenburg Arts Fest – Application submitted by Gare Thompson of 10 Whiting Street for the sale of wines & malt beverages for the Lunenburg Arts Fest, anticipated attendance will be 50, subject to determination of Police Chief as to number of officers to be assigned as the Chief has been notified of the event. Paula motioned to approve, Steve seconded, voted unanimously to approve.

5. One day Liquor License Application – 11/13/09, 6:00 PM – 11:00 PM, North Leominster Rod & Gun Club - Application submitted by the North Leominster Rod & Gun Club of 1501 Lancaster Ave. for the sale of wines & malt beverages for their Annual Holiday Meat Raffle, anticipated attendance will be 85, Police Chief has been notified of the event. Paula motioned to approve, Steve seconded, voted unanimously to approve.

6. STM 12/1/09 Review Articles – Tom M., presented the attached article for the board to accept M.G.L, Chapter 64L, §2(a) to impose local meals excise increase. Estimated to raise about \$60,000 over the course of a year by the DOR, could use this on the revenue side before you set your tax rate. Implementation in January would bring in \$30,000 for this fiscal year. Would like the board to put this on and let the town meeting body decide if they are willing to pay an increase in the sales tax. Board concurred that we should put it on and let the town decide, majority will vote against it at town meeting. Will add to the list as "P" and will be discussed accordingly.

Chair also wanted to put an article on as far as the Quinn Bill, as currently our contract with the Police Officers says we'll pay our 50% and the state will pay their 50% but it has come to our attention that we may still be liable for the total, which would include the states share. Would rather rescind and fund our share and wait until the state has a decision, the uncertainty of this at least warrants placing on the warrant. Not trying to get back anything or paying our obligation, trying to protect what we as the town felt we would be responsible for. Board supports placing on the warrant.

ARTICLE A To see if the Town will vote to raise and appropriate or transfer from available funds a sum of money to fund the FY09 & FY10 Police Officers Collective Bargaining Agreement dated July 1, 2008 – June 30, 2010 with IBPO Local 353, AFL-CIO; or take any other action relative thereto. *Submitted by Town Mgr.*

ARTICLE B To see if the Town will vote to raise and appropriate or transfer from available funds a sum of money to fund the FY10, FY11 & FY12 Public Employees Local Union 39 Collective Bargaining Agreement dated July 1, 2009 – June 30, 2012 with Laborers' International Union of North America AFL-CIO; or take any other action relative thereto. *Submitted by Town Mgr.*

ARTICLE C To see if the Town will vote to raise and appropriate or transfer from available funds a sum of money to provide a 4 % increase in FY2010 for all Town Employees under Salary Administration Plan that are already in the Merit portion of the Grade who would not be getting a step increase; or take any other action relative thereto. *Submitted by Personnel Board.*

ARTICLE D To see if the Town will vote to appropriate from available funds all sums of money necessary to amend the amounts voted for the Town's FY'10 Budget, under Article 6 of the May 2, 2009 Annual Town Meeting Warrant; or take any other action relative thereto. *Submitted by Town Mgr.*

ARTICLE E To see if the Town will vote to raise and appropriate, or transfer from available funds the sum of \$6,460.08 for payment of prior year expenses, or take any other action relative thereto. *Submitted by Town Mgr.*

ARTICLE F To see if the Town will vote to petition the Massachusetts General Court to enact the following special act:
AN ACT ENABLING THE TOWN OF LUNENBURG TO ACQUIRE THE PROPERTY OF ITS INDEPENDENT OPERATING ELECTRIC UTILITY COMPANY

Section 1. Notwithstanding the provisions of Chapter 164 of the General Laws or any other General or Special law to the contrary, the Town of Lunenburg may acquire the real and personal property of its independent operating electric utility company (IOU) in accordance with the provisions of General Laws Chapter 79 and/or Chapter 80A.

Section 2. This act shall take effect upon its passage.

Provided, that the General Court may reasonably vary the form and substance of the requested legislation within the scope of the general public objectives of this petition; or take any other action relative thereto. *Submitted by Utility Task Force Committee.*

ARTICLE H To see if the Town will vote to transfer the care, custody, management and control of the property shown on Town Assessor's Map 115, Parcel 16 from the Board of Selectmen for the purpose for which it is currently held to the Board of Selectmen for the same purpose and also for the purpose of granting a non-exclusive perpetual easement over the above-referenced property to Tri-Town Landing Limited Partnership and Great Bridge Properties, LLC, shown as "License Area" on a plan entitled "Plan of Land in Lunenburg, Massachusetts, Prepared for Great Bridge Properties," prepared by Hannigan Engineering, Inc., dated September 14, 2009, a copy of which is on file with the Town Clerk, and will authorize the Board of Selectmen to grant such an easement for purposes of installing, maintaining, repairing, replacing gas and electrical conduits, water pipes and drainage facilities, upon such conditions and for such consideration, which may be nominal consideration, or take any action relative thereto. *Submitted by Board of Selectmen.*

ARTICLE I To see if the Town will vote to authorize the Board of Selectmen to acquire, on behalf of the Town, by gift, purchase, eminent domain or otherwise, a ten (10) foot wide non-exclusive perpetual easement, over a certain parcel of land located on the northerly side of Young's Road from Tri-Town Landing Limited Partnership, shown as "Easement Area" on a plan entitled "Plan of Land in Lunenburg, Massachusetts, prepared for Great Bridge Properties," prepared by Hannigan Engineering, Inc., dated September 14, 2009, a copy of which is on file with the Town Clerk, for purposes of vehicular and pedestrian access and egress and installation and maintenance and repair of utilities in said "Easement Area," or take any other action relative thereto. *Submitted by Board of Selectmen.*

Planning Director Marion Benson informed the board that the wind energy bylaw was placed on the books but since the Green Communities Act came out, that these should be by rights and not that regulatory. Also wrote the solar bylaw and as these two bylaws included references to state codes, upon the advice of town counsel it was redrafted so that they were more user friendly. There is no question that alternative energy is going to be important and will be different ten years from now. Tom M., concern is that by limiting the lot size, you're limiting property owner's ability. Per Marion any bylaw has the right to go to the ZBA for a variance. Paula supports the idea of the bylaw but's echo's the other members concerns do think that disallowing the pre-existing non-conforming is a disservice. Per Toby (Chair, Planning Board) as far as the non-conforming lot, we're still following the existing regulations in place, because they don't have a conforming lot, they have to go through the legal process.

ARTICLE J To see if the Town will vote to amend the Protective Bylaw Section 6.6. **PERFORMANCE STANDARDS**

6.6.6. Revision.

6.6.6. Wind Energy Systems

6.6.6.1. Wind Energy Systems (WES) are subject to a Development Plan Review granted by the Planning Board and to the following conditions, unless waived or adjusted by the Planning Board as is consistent with the purposes of this Section.

a) Area and Height.

A Small Wind Energy System (SWES) shall be located on a parcel of forty thousand (40,000) square feet minimum or on Town owned property. For a SWES the blade tip height, defined as combined tower and turbine height shall not exceed eighty (80) feet measured from the average elevation of the existing grade at the base of the tower to the highest reach of the blade tip of the turbine.

A Commercial Wind Energy System (CWES) is located on a minimum of 400,000 square feet (10 building acres) or on Town owned property. The maximum height shall be determined by the Planning Board and/or according to manufacturer recommendation, not to exceed FAA Regulations.

b) Setback.

A SWES and CWES minimum horizontal distance shall be measured from the base of the tower structure to any property line or road right-of-way and shall be the greater of either the blade tip height plus ten (10) feet or the "fall zone", as determined by the Wind Turbine Chart or Engineering Standards supplied by the manufacturer. No part of any WES, including guy wire and anchors, may extend closer to the property boundaries than the setback for the zoning district in which it is located, as provided in the dimensional table in Section 5.0. of this bylaw.

c) Security.

The system is to be designed to prevent unauthorized access.

d) Appearance and Design.

The system shall be of monopole design with appropriate bracings, unless otherwise approved by the Planning Board, and a non-reflective exterior color designed to blend with the surrounding environment. No logos, designs, decorations, or writing shall be visible at or beyond the property line so that the visual character of surrounding neighborhoods and the community is minimally affected by site selection, turbine design or appearance, buffering, screening or lighting.

e) Cables.

All electrical cables from the tower base on all connected facilities are to conform to the Massachusetts Electrical Code as directed by the Building Official.

6.6.6.2. Construction, Operation and Maintenance.

a) An Application for a Wind Energy System:

A review for a Wind Energy System (WES) shall include a plan for the general procedures for safe and effective operation and maintenance of the facility and the following:

1. **SWES.** A schematic plan to scale showing placement of the tower distance to all property lines and abutting dwellings, proposed elevations, public and private roads, above ground utility lines, any other significant features and any measures designed to mitigate the impact or SWES. Any portion of these requirements may be waived by the Planning Board, if, in its opinion, the engineering/manufacturing information submitted is sufficient for the Board to make a decision.
2. **CWES.** A site plan, which is prepared to scale, stamped by a professional land surveyor, registered landscape architect or licensed civil engineer, showing, in addition, to other applicable requirements for a Site Plan, the location of the proposed WES and any associated buildings or appurtenances, distances to all property lines and abutting dwellings, existing and proposed structures, existing and proposed elevations, public and private roads including temporary access roads, above and below ground utility lines, any other significant features or appurtenances, and any measures designed to mitigate the impacts of the WES. Any portion of these requirements may be waived by the Planning Board, if in its opinion, the engineering/manufacturing information submitted is sufficient for the Board to make a decision.
3. A plan for the construction, operation, maintenance and removal of wind facilities, which shall be consistent with all other applicable Town, State and Federal requirements, including all applicable health and safety regulations shall be submitted to the Planning Board. Evidence shall be submitted to the Planning Board that the utility has been informed of the customer's plans and approval for an intertie agreement has been obtained.

b) Codes.

Building Permit Applications for small wind energy systems shall comply with the State Building Code and all applicable State Electrical Codes.

c) Noise.

Wind Energy Systems shall comply with the Massachusetts noise regulations (310 CMR 7.10).

d) Height.

WES towers shall comply with the above applicable section or with applicable FAA regulations, whichever is more restrictive.

e) Abandonment.

Unless authorized by written approval from the Planning Board, a WES shall be considered to be abandoned if it is not operated for a period of two (2) years, and shall be removed. If it is designated a safety hazard by the Building Commissioner, the owner shall correct the hazard or remove the WES within ninety (90) days. If the property owner fails to correct the safety hazard or to remove the wind energy system in accordance with the requirements, the Town may physically remove the WES at the owner's expense.

f) Removal.

Removal of a WES, any equipment shelters, and security barriers from the subject property requires proper disposal of the waste materials from the site in accordance with Local and State solid waste disposal regulations and restoration of the location of the WES to a stable condition with vegetation sufficient to prevent erosion and sedimentation.

g) Fees.

SWES. The applicant shall pay all costs, including application fee, review and inspecting fees as deemed appropriate by the Planning Board Fee Schedule.

CWES. The applicant shall pay all costs, including application fee, peer review and inspecting fees as determined by the Planning Board Fee Schedule.

h) Insurance.

Evidence of insurance coverage for all potential damages relating to a CWES shall be provided prior to construction.

i) Inspections.

Annual inspections to determine certification, safety and appearance shall be performed by the Building Commissioner.

j) Bonds.

An original Bond for a CWES shall be required to cover the cost of construction. An annual maintenance bond shall be posted as directed by the Planning Board Fee Schedule, or take any other action relative thereto. *Submitted by Planning Board.*

ARTICLE K To see if the Town will vote to amend the Protective Bylaw Section 6.6.7 Solar Energy Systems

6.6.7.1. Solar energy equipment and systems are subject to the conditions and procedures contained in this Section 6.6.7.

a) Solar energy system is an energy system from the sun by use of a water heating energy system or solar electric system known as photovoltaic.

6.6.7.2. Solar Energy Equipment:

a) Solar Water Heating: Solar collectors including panels, lines, pumps, batteries, mounting, framing and a storage tank in which potable water is preheated via a heat exchanger.

b) Solar Electrical: Photovoltaic electrical panels that produce electricity directly to the electric service system of a building or residence.

6.6.7.3. Construction, Operation and Maintenance

a) All solar installations must comply with the Zoning Dimensional Regulations of the Town of Lunenburg.

b) Roof Mounted Solar Energy equipment shall be located as not to increase the total height of the structure one (1) foot above the applicable zoning regulations related to height in the District in which it is located or such other height as is determined by the Building Commissioner to be essential for proper operation, but in no case, more than four (4) feet.

c) Ground Mounted Solar Equipment is not permitted in the Zoning Dimensional Setbacks as listed in Section 5.0., subsection 5.2. of Town of Lunenburg Zoning Bylaw and shall be adequately screened from the neighboring lot lines.

6.6.7.4. Information presented to the Building Commissioner for Residential Construction shall include, but shall not be limited to the following:

a) Sun and Shadow diagrams specific to the proposed installation to determine the solar access.

b) Detailed information, including maps, plans or dimensional sketches, showing proposed location of the solar installation including any setbacks from property line or distances from structures which are used for habitation or adjacent properties.

c) Submission of as-built sketches prior to final inspection.

6.6.7.5. Information presented to the Building Commissioner for Commercial Construction shall include, but shall not be limited to the following:

a) Site drawings showing building footprint, property lines, location and the dimensions of solar collectors, ridgeline of roof and description of the solar system.

b) Elevation drawings showing heights of buildings and solar installation above the roof.

c) All other necessary permits must be obtained through the Building Official.

6.6.8. The applicant shall furnish all necessary data for a permit that shall be granted by the Building Commissioner. In the event that a Development Plan Review by the Planning Board involves a solar project, the Building Commissioner shall refer to the Planning Board's Development Plan Review Report. The Planning Board shall include the Building Commissioner, Electrical, and Plumbing Inspectors as well as other departments in the review process.

6.6.9. As-built plans shall be submitted prior to final inspection; or take any other action relative thereto. *Submitted by Planning Board.*

ARTICLE L (street acceptance – White Tail Crossing DECISION OF BOARD TO PLACE ON STM WARRANT)

Chair would recommend we put this off until the Annual Town Meeting, to be removed.

Move to beginning. ARTICLE M To see if the Town will vote to raise and appropriate or transfer from available funds a sum of money to operate the Sewer Department Enterprise Fund; or take any other action relative thereto. *Submitted by Sewer Commission.*

ARTICLE N To see if the Town will vote to adopt the Lunenburg Sewer Project Review by-law as set forth in a document entitled "Lunenburg Sewer Project Review By-law" and currently on file in the office of the Town Clerk and Board of Selectmen as Article of the general Bylaws of the Town of Lunenburg; or take any other action relative thereto. *Submitted by Sewer Commission. Paula informed the board that the bylaw will be provided to the town however may not be required as is possibly covered under an existing bylaw.*

ARTICLE O To see if the Town will vote to amend the Sewer Service Area Map, such revisions currently on file in the office of the Town Clerk and Board of Selectmen; or take any other action relative thereto. *Submitted by Sewer Commission. Paula informed the board that there is a portion of property was not included in the sewer service area map on the Highfield Village development and may at some future point address a Cross Road parcel.*

Move to beginning. ARTICLE P To see if the Town will vote to accept M.G.L, Chapter 64L, §2(a) to impose local meals excise; or take any other action relative thereto.

Move to beginning. ARTICLE Q Quinn Bill language from labor counsel.

Chair entertain a motion to approve placing these articles on the warrant, Paula so moved, Tom M. seconded, voted unanimously.

OLD BUSINESS

1. Committee Updates – Per Chair, Representative Benson had her by-monthly meeting and discussed the Governor's cuts, an idea was put forward from the Representative that communities compile a list of unfunded mandates that we're required to fund, possibly

look at granting waivers, such as specified level of funding for libraries and the risk that by not funding we face the possibility of funding loss if we don't satisfy the required level of spending.

Dave also, noted the prevailing wage law and the restrictions incurred. Also, noted that the School Committee has begun their budget reviews and will be meeting here tomorrow, televised. Chair would like to see a group developed between the board, the Finance Committee and the School Committee to make recommendations to bring back to their boards to at least keep everybody informed and sharing communication. To be placed on next week's agenda and committee comprised of two from School Committee, two from Finance Committee, two from Board of Selectmen and the Town Mgr. Dave and Tom A., volunteered to serve on the committee.

2. **322 Flat Hill Road – Chapter Status** – Kerry had brought this before the board and the person that purchased this property, did eventually put this property back under Chapter status.

COMMITTEE APPOINTMENTS / REAPPOINTMENTS / RESIGNATIONS

1. **Resignation, Kathryn Herrick – Tax Work-off Program** – resignation has been rescinded.

2. **Appointments:** **Tax Work-off Program – Jeffrey Ugalde** – appointed
Sewer Commission – Robert Ebersole – Paula move to appoint Mr. Ebersole to Sewer Commission, Steve seconded voted unanimously to approve.

EXECUTIVE SESSION @ 6:30 PM

1. **Contract Negotiations -**

Being no further business board voted unanimously to adjourn Regular Session at 10:34 P.M.

Respectfully submitted,

Laura Williams, Chief Administrative Assistant
Board of Selectmen

EXECUTIVE SUMMARY

Overview

Public utility companies in Massachusetts have an obligation to the public to provide safe and reliable service. When a public utility company accepts the rights and privileges of a franchise conferred to it by the Massachusetts Legislature to operate exclusively within a specified service territory, that public utility must undertake the obligations accompanying that franchise, including the provision of service in a safe and reliable manner. Such an obligation includes (but is not limited to) the responsibility to restore service in a timely manner when service to a customer has been interrupted. The Department has explicitly confirmed this obligation in exercising its oversight authority.

In this Order, the Department finds that Unitil's preparation for and response to Winter Storm 2008 represented an unquestionable failure to restore service to customers in an efficient, effective, and timely manner, and that this constitutes a failure of the Company to meet its public service obligation to provide safe and reliable service.

While Unitil's performance would warrant consideration of monetary penalties, the Department is without authorization to fine the Company in Winter Storm 2008. In this instance, the Department's enforcement power stems from its statutory authority over the Company's rates, including recovery or disallowance of investments and expenses related to company activities (such as preparing for and responding to storms), and its authority to set a company's allowed return on investment. While the Company has not yet requested recovery of storm expenses or the resetting of rates, the Company's failure to its customers during Winter Storm 2008 will be addressed in detail in our forthcoming review of the Company's rates. The Department will conduct a comprehensive review of Unitil's storm preparation and restoration expenses, and will prohibit the Company from recovering from customers any expenses deemed imprudently-incurred. At the time of the Company's next rate case, the Department will fully consider the Company's failure to meet its public service obligation to provide safe and reliable service when we establish the return Company shareholders will be allowed to earn.

There are additional steps the Department takes in this Order to investigate the nature and scope of management deficiencies that may have compromised the Company's ability to meet its public service obligation with respect to safety and reliability, and to direct and closely monitor actions the Company must take in order to ensure safe and reliable operations on a going forward basis. Specifically, for the first time for any utility in nearly two decades, the Department orders Unitil to initiate, subject to Department oversight and at the Company's own expense, a comprehensive independent management audit which shall address Unitil's (1) strategic planning processes; (2) staffing decisions and the extent to which they affect FG&E; (3) management and control of FG&E, including resource allocation decisions made among Unitil's three subsidiary companies; and (4) relations with customers and public safety officials.

Finally, the Department's top priority stemming from this review is to take immediate steps to ensure that the Company acts swiftly to repair its failures, to operate its system in a manner required of a franchised public utility, and to ensure preparation for and proper response to *any* future event or storm that leads to customer outages. Consequently, in this Order the Department directs the Company to immediately implement a suite of management and operational steps to achieve this result, and to document its progress in this area monthly, quarterly and annually.

Given the severe and unacceptable impacts of Unitil's performance during Winter Storm 2008 on the residents, businesses, and public safety officials of the Company's service territory, we recognize that the steps we take today may not seem adequate to address the justifiable outrage of the communities that had to suffer through the Storm and its consequences. Nonetheless, in this Order the Department documents completely the Company's failures; takes every step we can under current law for remedial action; and imposes requirements on the Company to prevent a repeat of this experience in the future.

Summary of Findings

The primary contributor to the Company's unacceptable performance was its inadequate planning and training for major storm events. The Company's lack of planning and training rendered it incapable of responding to the events of Winter Storm 2008 in an effective and timely manner. Moreover, the Company's open-ended Emergency Response Plan ("ERP") design was not appropriate for a storm of this magnitude. This led to confusion that severely hindered Unitil's restoration efforts. The Company was severely under-resourced, which significantly hampered its damage assessment and restoration efforts. Although the Company performed several of the pre-storm actions specified in its ERP, the Company failed to undertake numerous critical steps, including the inexcusable failure to contact its Life Support Customers. Unitil's internal communications as well as its communication efforts with municipal officials and customers were significantly flawed. In addition, the Company did not properly manage its tree trimming activities. And finally, the Company exacerbated customer confusion with its estimated bills.

First, with regard to planning and ERP design, the Department rejects the Company's assumption that it should not be expected to plan for storm events more significant than have previously occurred. The small size of the Company, with its limited resources, makes it essential for the Company to plan for how to respond to an emergency that would overwhelm its available resources. The Company failed to consider how it could respond to emergency events that caused widespread damage to its system and affected all three of its service territories and utilities region-wide. Had the Company reviewed the emergency planning practices of the other Massachusetts electric distribution companies, as previously directed by the Department, it would have been aware that these companies conduct "tabletop" exercises intended to prepare them for emergency events. Unlike other companies, the Company made no effort to determine how the ERP would function under severely stressed situations. The Company's lack of planning and training for a significant storm event left it unprepared to respond to the magnitude of system damage that it experienced during Winter Storm 2008.

The Department finds that this lack of planning represents a clear and unambiguous failure on the Company's part to provide safe and reliable service to its customers.

Second, the Department finds that the Company's pre-storm activities reflected a routine approach that was in contrast to the severity of the forecasted storm, an approach that contributed to the Company's inability to restore service to its customers in a reasonable time period.

Third, the Department finds that the Company's damage assessment efforts were significantly deficient. In addition to a lack of sufficient personnel to perform damage assessment (and the fact that the available personnel were also required to perform other duties), the Company failed to recognize the extent of the damage to its system, despite the information being provided by (1) its damage assessors regarding damage to the Company's secondary distribution system, (2) customers calling into the Call Center to report outages, and (3) public safety officials contacting the Company regarding wires down. Instead, the Company maintained its initial expectation that service to most customers would be restored once its primary distribution system was energized. In addition, the Company failed to use its helicopter vendor, as provided for in its ERP, despite the difficulties experienced by its on-ground damage assessors. The Company's poor performance regarding damage assessment resulted in the Company's failure to (1) acquire much needed resources, (2) provide accurate and useful information to the public regarding restoration times, and (3) minimize the overall duration of the restoration. Such performance represents a failure on the Company's part to satisfy its obligation to provide safe and reliable service to its customers.

Fourth, the Company failed to take appropriate and reasonable actions both in its pre-storm planning and then during the storm regarding the acquisition of resources that would have allowed it to restore service to its customers in a reasonable period of time. The Company exacerbated this lack of planning by failing to contact its largest repair crew contractor during its pre-storm preparation activities. The Company further compounded its resource adequacy problems during the storm by limiting its solicitation of crews primarily from Massachusetts utilities and municipal light companies, despite evidence that (1) the level of crews available to the Company was insufficient, and (2) crews from these local sources would not be available because of the widespread nature of the storm. The Company's deficient resource acquisition efforts contributed significantly to its poor performance during the storm, and represent a failure on the Company's part to satisfy its obligation to provide safe and reliable service to its customers.

Fifth, the Department identifies a variety of problems with the restoration process that likely slowed its progress. The Department finds that certain personnel had too many simultaneous responsibilities, and the ERP was not always clear regarding responsibilities of restoration personnel. In addition, the delay in returning timely and accurate information on work completed and the Company's method of capturing field notes, affected restoration. The Department concludes from the pace of restoration that the Company did not restore customers in an efficient, effective, timely manner, and consequently failed to meet its service obligation to provide safe and reliable service.

Sixth, and most egregiously, Unitil failed to plan, act or ask for assistance on behalf of Life Support Customers. In particular, the Company failed to (1) contact (and did not have a process to contact) its Life Support Customers in a proactive way, contrary to previous Department directives; (2) comply with its ERP regarding contacting Life Support Customers before, during, and after the storm; and (3) enlist the aid of public safety officials to communicate with or assist Life Support Customers, despite the fact the Company had not contacted the majority of these customers. Taken as whole, the Company's actions represent an inexcusable and intolerable failure of its duty to its most vulnerable customers who rely on electric service for life support.

Seventh, the Company's communications with the public, local elected officials, and local safety officials were highly flawed in the following ways.

- (1) The Company's Call Center was quickly overwhelmed and unable to provide useful services to customers, resulting in confusion and great frustration among customers. This is because (a) the number of calls far exceeded the center's capacity, and (b) the information available to the Company's customer service representatives was inadequate and inaccurate.
- (2) The Company's public service announcements ("PSAs") were not accurate, useful, or consistent with the information available to the Company. For example, four days into the storm, the PSAs stated that the Company anticipated that service would be restored in a matter of days, despite the fact that the Company should have recognized at that time the extreme and widespread levels of system damage, and the lack of available resources to repair the extent of damage.
- (3) Despite previous Department directives regarding the need for companies to be proactive in communicating with local officials during emergencies, the Company's communication with local elected and safety officials was disorganized and performed on an ad hoc basis, resulting in confusion and great frustration among local officials. The Company (a) failed to establish and delegate clear responsibilities for those communicating with local officials, (b) used multiple liaisons between itself and those officials, and (c) did not provide those acting as liaisons with the necessary information. In addition, the Company inadequately communicated with municipalities regarding wire down calls.

The Company's performance in communicating with public, local elected officials and local safety officials represent a failure to satisfy its obligation to provide safe and reliable service to its customers.

Eighth, the Company underfunded its vegetation management activities and failed to adhere to its tree trimming schedule. In 2007, the Company revised its practices to provide greater focus on its primary distribution circuits, and less focus on its secondary circuits. Although the Department is unable to draw a direct correlation between the Company's vegetation management practices and storm damage, evidence suggests that these practices

contributed to damage on its secondary distribution system. The Department finds the Company's vegetation management practices inadequate, and likely one of the several factors that contributed to the severity of the outages experienced during Winter Storm 2008.

Finally, although the Company's decision to issue estimated bills to customers whose power had been interrupted by Winter Storm 2008 was legally permissible, the decision represented a serious error in judgment and resulted in considerable customer confusion and anger.

In sum, the failures in the Company's preparation for and response to Winter Storm 2008 were numerous and systematic. As described in the Order, the Department does not have the authority to impose a direct penalty on the Company at this time, as parties in this case have requested. However, we are exercising our existing authority to the fullest extent possible. First, in this Order we require the Company to immediately implement a suite of management and operational steps to improve its planning for, and response to, significant storm events in the future. In addition, we order a comprehensive independent management audit to investigate and address potential management problems through to the highest levels of the organization, as well as potential management issues related to Unitil's relationship with FG&E. Finally, the Department's findings in this Order will play a critical role at the time of the Company's next rate case and in the review of the return on equity that Company shareholders will be allowed to earn; and a future request by the Company to recover its costs associated with Winter Storm 2008.

Budget Update FY2010

Kerry A. Speidel
November 3, 2009

Apportioning Projected Deficit

| | |
|--------------|-----------|
| * School | (104,028) |
| * All Others | (224,761) |
| * Total: | (328,789) |

FY2010 Projected Deficit

Surplus/ (Deficit) ATM

| | | |
|---|----|-----------|
| Change from Cherry Sheet Estimate to Actual | \$ | (116,860) |
| Change in Cherry Sheet Offsets | \$ | 40,461 |
| Change in Cherry Sheet Assessments | \$ | (83,506) |
| Recycling Enterprise Deficit | \$ | (115,161) |
| Court Judgment | \$ | (27,500) |
| Preliminary New Growth Estimate | \$ | (26,223) |
| Net: Surplus/ (Deficit) | \$ | (328,789) |

Changes/ Adjustments since 09/22/09

- * New Growth: revised estimate of \$107,245, which is now only off by \$15,130 (original est. shortfall was \$26,222)

FY2010 Projected Deficit

| | |
|--------------------------|-----------|
| * Surplus/ (Deficit) ATM | |
| * State Aid Adjustments | (159,905) |
| * Solid Waste Enterprise | (115,161) |
| * Court Judgment | (27,500) |
| * New Growth Estimate | (26,223) |
| * Total: | (328,789) |

Changes/ Adjustments since 09/22/09

- * Additional Cuts to Operating Budget
 - * Unclassified: \$8,330
 - * General Government: \$18,809
 - * Police: \$44,848 (eliminate State Quinn; add IOD)
 - * Fire: \$9,031 (grant)
 - * Other Protection: \$2,500 (grant)
 - * Health & Sanitation: \$100

Changes/ Adjustments since 09/22/09

- * Additional Cuts to Operating Budget
 - * Public Works: +\$32,000 (Solid Waste)
 - * Library: \$15,939 (Library Materials)
- * Total Cuts: \$67,557

Stabilization Fund

- * Balance: \$1,259,544
- * Represents: 5.01% of total Operating Fund Budget
- * Draw Request of \$142,622, represents 11.32% of Fund Balance
- * Agree to consider this amount a loan to be repaid over 5 years (\$28,524/ year)

**Changes/ Adjustments since
09/22/09**

| | |
|-------------------|-------------|
| • All Others: | \$(224,761) |
| • New Growth | \$ 11,092 |
| • Additional Cuts | \$ 67,557 |
| • Monty Tech | \$ 3,450 |
| • Total: | \$ 82,099 |
| • Remaining: | \$(142,622) |

Justification for Draw

- Loss of Revenue:
 - Lottery Aid down 28.5% in 2 years
 - Local Receipts down 10% due to poor economy (down 13% if you factor out increases in fees)
 - No Free Cash to fund Capital Purchases, now funded with "Operating Fund" dollars
 - Operating Budget reduced by \$385K, despite rising costs.

Remaining FY2010 Deficit

- Remaining: \$142,662
- Court Judgment: \$ 27,500
- Solid Waste: \$ 115,161
- One-time or Extraordinary Expenses to be "charged to" Stabilization Fund

Justification for Draw

- Expenses have been cut and cut
- "Bare-bones" to "No bones being connected."
- Other options- furloughs & layoffs- won't produce the savings needed without drastically affecting services or triggering onerous bargaining hurdles
- Employees have made significant concessions in benefits already- adjustments in insurance co-pays have saved the town in excess of \$300K

Justification for Draw

- There has to be some set of circumstances which justify use of the Stabilization Fund- the Rainy Day Fund- and I believe that set of circumstances is before us now.